

STATE BOARD OF ELECTIONS
Board Meeting
Tuesday, January 18, 2005
Springfield, Illinois

MINUTES

PRESENT:

John R. Keith, Chairman
Jesse Smart, Vice Chairman
William McGuffage, Member
David E. Murray, Member
Albert Porter, Member
Wanda L. Rednour, Member
Elaine Roupas, Member
Bryan Schneider, Member

ALSO PRESENT:

Dan White, Executive Director
Steve Sandvoss, Acting General Counsel
Becky Glazier, Assistant to Executive Director

The regular monthly meeting of the State Board of Elections was called to order at 11:00 a.m. with seven members present (Member Murray by telephone). Member McGuffage was delayed and Member Porter held his proxy.

Chairman Keith opened the meeting by leading everyone in the pledge of allegiance.

Chairman Keith presented the minutes of the December 3 regular meeting and the December 30 special meeting. Member Roupas moved to approve the minutes as presented. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0. (Member McGuffage arrived at 11:15 a.m.)

The Executive Director introduced two new staff members in the Springfield office. Brent Davis joined the Campaign Disclosure division and Kalpana Krishnamurthi joined the Information Technology Division. Director White introduced Mark Mossman and indicated that although he has been with the agency for some time he has taken the new position of Statewide Voter Registration Database Manager/Coordinator. Mr. Mossman spoke to the Board about his new role and his enthusiasm on this important project and looked forward to working with staff, election authorities, vendors and other governmental agencies.

The Executive Director presented the proposed FY06 budget appropriation. Director White complimented Mike Roate, Fiscal officer, on his efforts in getting the budget assembled. This year's

budget request reflects a 20% decrease from the FY05 budget due to only one election will be held in FY06, compared to three in FY05; less submissions of voter registrations; no purchase of election codes and a reduction in personal services (due to filling vacancies at lower salaries and a reduction in the retirement formula). Director White reviewed the budget request indicating we would seek our own appropriation bill as well as bi-partisan support. Discussion ensued on possible funds needed on any redistricting assignments the agency may be given. There is some money available if necessary but with new technology and staff knowledge we should have sufficient funds. The HAVA funding is a separate funding and we have already received spending authority for HAVA funds. Vice Chairman Smart moved to approve the FY06 appropriation request. Member McGuffage seconded the motion which passed by roll call vote of 8-0.

Director White reported on the Advisory Committee meeting held this morning. There were ten members of the committee present and discussions included the statewide voter registration system, pending state legislation and the Board's position on certain legislation. Chairman Keith noted we received good feedback on the proposed administrative complaint procedure rules.

The Executive Director noted that Kane County has submitted a retabulation of the results from the November 2, 2004 general election. Pat Freeman discussed the events that led to the retabulation and recommended the Board amend its November 2 official canvass to reflect the re-tabulation by the Kane County canvassing Board. Member Roupas moved to amend the November 2, 2004 canvass affected by the retabulation. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0. In response to a question, Ms. Freeman indicated this has happened before, but it was resolved before the canvass was certified.

The Executive Director presented proposed changes in canvassing dates for discussion. Pat Freeman reviewed the situation indicating there is a need to change canvassing dates as the current schedule provides for the Board's canvassing date to be later than the beginning date of the terms for Supreme, Appellate and Circuit Judges in six of the next seven election years. She presented three charts (indicating on Chart C a date change). This was discussed at the Advisory Committee meeting and the consensus is to keep the 14 days for counting provisional voting and the counties canvassing

on the 15th day as outlined on Chart C. The clerks were asked to take this before their legislative committee meeting for endorsement. Member Murray moved to approve Chart C as amended. Member Rednour seconded the motion which passed by roll call vote of 8-0.

Director White presented for Board consideration options for certifying the multi-county educational service region trustees and Fox Waterway directors. The last day to certify candidates for the consolidated election is Thursday, February 3. In the past, staff would routinely issue the certification without convening the Board. Discussion ensued on whether to have the Board direct staff to certify or to hold a special meeting via conference call on February 3. The Board agreed by consensus to meet on February 3 to certify these candidates.

At this time Mr. Jay Bennett, Fidar, was present to discuss Board concerns with Christian County and the ballot office order. Dianne Felts reviewed the issue as discussed at the November Board meeting indicating the problem was the judicial offices were not correct on the sheet that the totals are printed upon and the vendor refused to correct the problem. Mr. Bennett indicated it was a time issue and did not see the ballot order as a big issue at the time. He indicated this problem would not occur again.

Ms. Felts discussed the issue of the counting of ballots in White County Clerk and the problems with the new optical scan equipment and the ballots jamming. Ms. Felts indicated that she has met with the vendor as well as spoken with other jurisdictions where this occurred. The solution they have come up with will be to shrink wrap everything by precinct and by style so the ballots will be in the shrink wrap up until election day. It appears the humidity or rain caused the ballots to have the problems.

Director White discussed correspondence from Cook County Clerk David Orr requesting the Board to again recommend to all election authorities for the upcoming Consolidated Elections that absentee ballots from military and overseas voters be counted if received within two weeks after the election. Mr. White indicated the consensus of the Advisory Committee was, although this is a good idea, they did not believe there is any authority to do so. The Board did make this recommendation for the November 2004 general election. Chairman Keith noted that the clerks feel that all absentee ballots

should be treated the same way and all jurisdictions should be uniform. Discussion ensued on authority to do this as well as support legislation to resolve this issue. Member Murray moved to support legislation to consider all military and overseas absentee ballots within a 14 day period if mailed by the deadline. Member Rednour seconded the motion which passed by roll call vote of 8-0.

Member McGuffage then moved to renew the recommendation made for the November 2004 General Election and that military and overseas absentee ballots for the 2005 consolidated elections be counted if received within 14 days after the election. Member Porter seconded the motion which passed by a vote of 6-2 with Vice Chairman Smart and Chairman Keith voting in the negative.

Member Murray moved to recess and convene in executive session for the purpose of discussing personnel and litigation matters. Member McGuffage seconded the motion which passed by consensus. Meeting recessed at 12:10 p.m. and reconvened at 1:25 p.m.

Chairman Keith indicated to accommodate parties present on campaign disclosure matters those would be taken out of agenda order. He further indicated that *Saewert v. Santana*, 04CD38 will be placed on the February agenda.

Chairman Keith presented *SBE v. Committee to Re-Elect Mike Costello*, 04AP11. The Acting General Counsel agreed with the hearing officer's recommendation that the appeal be granted. Mr. Costello was present. Vice Chairman Smart moved to grant the appeal. Member Rednour seconded the motion which passed by roll call vote of 8-0.

Chairman Keith presented *SBE v. Scott County Democratic Central Committee*, 04JS115, an appeal of a campaign disclosure fine. Terissa Lashmett, Vice Chairman of the committee was present. Mr. Sandvoss reviewed the matter and indicated that the hearing officer recommended a fine of \$600 to be added to the previous fine of \$1,725. Ms. Lashmett discussed the committee's activities noting that the chairman admits that mistakes were made. However, this is a small committee with only a balance of \$615 in the bank. Discussion ensued on the past assessment as well as the current assessment and Member Porter questioned if there isn't some discretion in imposing these fines. Member Murray moved to accept the settlement offer of \$1,725 for the first offense and current offense. Payment should be negotiated with staff before the next meeting. Member McGuffage

seconded the motion which passed by roll call vote of 6-2. Chairman Keith and Member Schneider voted in the negative as they both felt there should be some fine for the new offense.

Chairman Keith presented *SBE v. Tow PAC*, 04JS89. Susan Jepsen and Joe Pedigo were present on behalf of the committee. Mr. Sandvoss reviewed the activities of the committee and noted that the report was received 11 days late. The hearing officer has recommended a \$900 assessment based upon \$550 for this late filing, and \$350 penalty for a previous delinquent filing. The appeal was received late but the hearing officer decided to accept the appeal, but recommended the appeal be denied for lack of adequate defense. Mr. Sandvoss indicated the rule does not allow for an appeal to be accepted after the 30 day deadline. However, in past practice it has been allowed if the committee can show that extraordinary circumstances warranted the late filing of the appeal. Mr. Sandvoss did not feel extraordinary circumstances existed. Ms. Jepsen indicated that she just took over these responsibilities and did not receive or open the appeal until October 7 and spoke with Mr. Borgsmiller on October 11 and faxed the appeal at that time. The committee is a very small organization and raised only \$85 last year. The year before they filed a non-participation. Member Roupas moved to consider the appeal and permit the hearing. Member Porter seconded the motion which passed by roll call of 5-3 with Members Murray, Schneider and Chairman Keith voting in the negative.

At this time Ms. Jepsen offered a settlement of \$350. Vice Chairman Smart moved to accept the offer of \$350 with payment to be received within 30 days. Member McGuffage seconded the motion which passed by roll call vote of 6-2 with Member Schneider and Chairman Keith voting in the negative.

Member Murray moved that in accordance with action in executive session to request the Acting General Counsel to request the opinion of the Attorney General regarding HB 640 as it relates to the Supremacy Clause . Member Rednour seconded the motion which passed by roll call vote of 8-0.

The Executive Director presented for informational purposes the FY 05 fiscal status report for the first half of the fiscal year, the HAVA funding report, and the two year plan of activity for the months of January and February.

Chairman Keith then presented appeals of civil penalties and asked if any Board members wished to remove from group consideration. Agenda items 3a3b 3, 8, 13, 14 and 16 were removed from group consideration. Mr. Sandvoss concurred with the hearing officer's recommendation in items 3a3b 2,4,5,6,7,9,10,11,12,15,17 and 18. No one was present on behalf of any of the committees. Vice Chairman Smart moved to accept the hearing officer's recommendation on the remaining appeals (agenda items 3a3b (2,4,5,6,7,9,10,11,12,15,17 and 18). Member Roupas seconded the motion which passed by roll call vote of 8-0.

Chairman Keith presented *SBE v. Kaneland Referendum Committee, 04CD56*. No one was present on behalf of the committee. Rupert Borgsmiller discussed the committee's failure to comply with a Board order to file their semi-annual report electronically. In the past when a committee has violated a Board order they have been assessed a penalty. Mr. Sandvoss indicated that the committee did not appear at the hearing. The committee did file on paper but has never filed electronically. Mr. Sandvoss concurred with the recommendation of the hearing officer that a fine of \$500 be assessed for failure to follow a Board order. Member Porter moved to assess a \$500 penalty but it be rescinded if the report is filed electronically by February 1, 2005. Member Murray seconded the motion which passed by roll call vote of 8-0.

Chairman Keith presented *SBE v. Citizens for Robert Hughes, 04CD 43*, a complaint following public hearing. No one was present on behalf of the committee. Mr. Borgsmiller indicated the committee has not filed electronically and the hearing officer recommended a penalty of \$500. Mr. Sandvoss concurred. Vice Chairman Smart moved to assess a \$500 penalty. Member McGuffage seconded the motion which passed by roll call vote of 8-0.

Chairman Keith presented *SBE v. Committee to Elect Edwin Belz Judge of the Circuit Court of Cook County, 04CD54*, a complaint following public hearing. No one was present on behalf of the committee. The committee filed a final report in lieu of the June 2004 semi annual report. The hearing officer recommended the committee be assessed a penalty of \$3,600 and as a first violation the penalty be stayed; should the committee remain inactive for a period of two years the penalty will be abated. Mr. Sandvoss concurred with the recommendation of the hearing officer. Vice Chairman

Smart moved to adopt the recommendation of the hearing officer. Member Roupas seconded the motion which passed by roll call vote of 8-0.

Chairman Keith presented *SBE v. Friends to Election John Hayden*, 04CD62, a complaint following public hearing. No one was present on behalf of the committee. Mr. Sandvoss reviewed the committee's activities and concurred with the hearing officer's recommendation that a penalty in the amount of \$3,300 be assessed. Vice Chairman Smart moved to accept the recommendation of the Acting General Counsel. Member Rednour seconded the motion which passed by roll call vote of 8-0..

Chairman Keith presented *SBE v. People for Pankau*, 04AP27. No one was present on behalf of the committee. Member Roupas indicated the issue in this matter was similar to two others and to be consistent this should also be denied but the fine reduced rather than the appeal be granted. Mr. Sandvoss suggested remanding the matter back to the hearing officer for determination as to when the check in question was received as the only information there is at this point is when the check was deposited. By Board consensus the matter was remanded to the hearing officer. Discussion ensued on different hearing officer's reports and inconsistencies between their recommendations.

Chairman Keith presented *SBE v. Committee to Elect Jay Footlik*, 04DS75. Member Roupas felt there was no evidence shown to support the testimony that he tried to file electronically and via mail. Member Porter questioned why testimony itself couldn't be considered evidence. Chairman Keith noted that even assuming it was accepted the Board has denied others. The hearing officer recommended the appeal be granted. The Acting General Counsel disagreed with the recommendation of the hearing officer for the same reasons stated by Member Roupas and Chairman Keith. Chairman Keith moved to deny the appeal and assess a fine of \$5,000 and the previous \$100 penalty that was stayed. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

Chairman Keith presented *SBE v. Committee to Elect Michael Wisniewski*, 04JS53. No one was present on behalf of the committee. This was the committee's first violation and there was no dispute as to the date the report was file. However, Mr. Wisniewski encountered a host of extremely difficult personal problems during this time. Mr. Sandvoss concurred with the recommendation of the hearing

officer that the appeal be granted. Member Murray moved to accept the recommendation of the hearing officer. Vice Chairman Smart seconded the motion which passed by roll call vote of 6-2 with Member Schneider and Chairman Keith voting in the negative.

Chairman Keith presented *SBE v. Citizens Activated to Change Healthcare*, 04JS108. No one was present on behalf of the committee. Mr. Sandvoss reviewed the activities of the committee noting that the report was filed one day late. The committee did not file an appeal within the 30 day period and it was recommended the appeal be considered because of the severity of the penalty. Mr. Sandvoss recommended not to consider the appeal as there was no reason given by the respondent. Member Murray indicated since it was only one day late to grant it as the Board has granted them in the past. Member Murray then moved to accept the appeal. Discussion ensued noting that the report was filed one day late and the appeal was filed over one month late. Member Murray withdrew his motion. Chairman Keith moved that there was no jurisdiction for an appeal. Member Porter seconded the motion which passed by roll call vote of 8-0.

Chairman Keith then presented for discussion appeals that have recommendations to be denied (agenda item 3a3c 19-60). The following were removed from group consideration: #25, 34, 35, 39, 46, and 48. Mr. Sandvoss indicated there were four appeals that requested their appeals be postponed to the February meeting. Appeals number 26, 28, 47 and 50 were continued to the February meeting. It was noted, future requests for postponement must have supporting documentation as to why they are making the request. The Acting General Counsel concurred with the remaining recommendations that the appeals be denied. No one was present on behalf of the committees. Vice Chairman Smart moved to concur with the hearing officer's recommendations on the balance of the cases. Member Rednour seconded the motion which passed by roll call vote of 8-0.

Chairman Keith presented *SBE v. Citizens for John Sweeney*, 04JS73. Mr. Sandvoss indicated his disagreement with the hearing officer. The respondent indicates that he mailed the report prior to the deadline. The envelope had no postmark to determine when it was placed in the mail. Section 9-10c indicates there will be no fine if mailed and postmarked at least 72 hours prior to the filing deadline. Since there is no postmark to make this determination he recommended the appeal be

granted. Member Porter moved to grant the appeal. Member Murray seconded the motion which passed by roll call vote of 8-0.

Chairman Keith presented *SBE v. Committee to Elect Becky Morganegg, 04AP4*. No one was present on behalf of the committee. Mr. Sandvoss reviewed the committee's activities indicating a contribution was disclosed on a schedule A rather than the A-1. There was confusion as to what form it should have been filed on and Mr. Sandvoss felt that in this case the appeal should be granted. It was noted that this information would not have appeared on the Internet anyway unless it was an electronic filing. Vice Chairman Smart moved to grant the appeal as recommended by the Acting General Counsel. Member Porter seconded the motion which passed by roll call vote of 8-0.

Chairman Keith presented *SBE v. Committee to Elect Larry Rogers, Jr., 04AP56*. No one was present on behalf of the committee. Member McGuffage recused himself from this case. Member Roupas indicated this case had to do with a loan from the candidate and it seems there was not a clear understanding of what had to be reported for loans. Member Roupas felt that the appeal should be granted in this matter. Chairman Keith felt that perhaps the appeal should be granted in part and denied in part. Discussion ensued on the loans received and the contributions. Mr. Sandvoss concurred with the hearing officer's recommendation to the extent the amounts be reduced and further discussed the loans received from persons other than the candidate and the donations that were divided. Chairman Keith moved that a fine of \$2,700 be assessed. Member Murray seconded the motion which passed by roll call vote of 7-0-1 with Member McGuffage recusing himself.

Chairman Keith presented *SBE v. Committee to Re-elect Wyvetter Younge, 04AP20*. No one was present on behalf of the committee. Chairman Keith indicated the ten percent was a one time reduction and no reduction should be allowed on the second violation which the hearing officer is allowing. The hearing officer recommended the appeal be denied but recommended the penalty be reduced to \$300. Mr. Sandvoss concurred with the recommendation of the hearing officer. Member Murray moved to adopt the recommendation of the hearing officer. Member Rednour seconded the motion which passed by roll call vote of 6-2 with Member Schneider and Chairman Keith voting in the negative.

Chairman Keith presented *SBE v. Volunteers for Delgado*, 04AP34. No one was present on behalf of the committee. The hearing officer noted that the committee previously received a 10% reduction, but because of the short duration of the delinquency recommended that the penalty be reduced to 50% or \$1,250. Discussion ensued on the committee's activities and it being a second violation and it was questioned why the hearing officer was reducing the penalty by 50%. Mr. Sandvoss concurred with the hearing officer's recommendation and indicated that the distinction was the previous assessment was in relation to A-1 reports in conjunction with the 2000 primary election and the current assessment is for the 2004 primary election. It has been past practice that a 10% reduction be applied, even in situations where the committees did not appeal, as long as it was the same election. Discussion ensued and Chairman Keith moved to assess a penalty at 20% for the second violation. Member Murray seconded the motion. Discussion continued and Member Schneider opposed the motion because there were multiple violations, the committee did not appear and the appeal affidavit's signature is stamped while it was still notarized. He felt this show the committee had no desire to be compliant. Member Schneider offered a substitute motion to accept the hearing officer's recommendation. Vice Chairman Smart seconded the motion which lost by roll call vote of 4-4 with Members Murray, Porter, Rednour and Chairman Keith voting in the negative.

The original motion to assess a penalty of 20% was called and passed by roll call vote of 5-3 with Members McGuffage, Schneider and Vice Chairman Smart voting in the negative.

Chairman Keith presented *SBE v. 43rd Ward Republicans*, 04AP36. No one was present on behalf of the committee. The hearing officer has recommended a total penalty of \$1,068.38. Chairman Keith felt to be consistent to grant the appeal for the \$925 assessment and reduce the other assessment to 10% which would be \$144. Mr. Sandvoss felt that further information was necessary and depending on when the report was filed would determine whether or not it should be granted in its entirety or a reduction applied. After further discussion, Chairman Keith moved to deny the appeal and assess a penalty of \$240. Member Murray seconded the motion. The motion was then called and passed 8-0.

Rupert Borgsmiller discussed the issue of electronic filing and whether a committee meeting the electronic filing threshold but failing to file electronically should be penalized for late filing if a report was timely filed on paper. Mr. Borgsmiller presented proposed guidelines that staff will follow regarding the timely electronic filing of reports. Member Murray moved to approve the guidelines for placement in the SBE Administrative Rules. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

Mr. Sandvoss reviewed his memorandum regarding assessments and debt collection procedures. He recommended waiting for the Department of Revenue (as the Debt Collection Board) to submit their proposed rule on the collection of debts to JCAR. We will have a better idea of the options available to facilitate the collection of existing civil penalties at that time. Mr. Sandvoss indicated he will continue to review the provisions of the rules as we are not sure what agencies will be included in this rule. He will report back to the Board once the rules have been sent to JCAR.

Mr. Borgsmiller further discussed committee's who have been sent final orders and recommended staff contact committee's with second notices. Some of the committees could face ballot forfeiture. Staff can cite the SBE rule noting we have an obligation to collect and will be considering further procedures.

The Acting General Counsel presented for informational purposes a listing of civil penalties paid.

Executive Director White discussed the issue of committee's licensed to conduct raffles and reporting of the gross receipts, expenses and net proceeds. Director White reminded the Board of the ongoing issue with the external audit and the Board's interpretation of how committees must report raffle fundraisers. Mr. Borgsmiller discussed the issue indicating the only option seems to be a paper report at this time. It could be done electronically in approximately one year. Member Porter suggested having the Executive Director, staff and the General Counsel review the matter and find a solution and report back to the Board.

Director White presented the legislative agenda for final Board determination. Cris Cray noted that legislative recommendations #5 and #8 already have Board approval. Member McGuffage asked

that recommendation #6 (regarding candidate withdrawals) be put on hold at this time. Discussion ensued recommendation #4 which would allow pre-trial detainees to vote absentee, and on #9 regarding phone numbers on registration cards. It was noted to place the issue of compliance with submitting phone numbers on VIS submission on the February agenda for Board discussion. Member Porter discussed recommendation #7 and did not feel comfortable with the addresses being placed on the Internet. Recommendation #3 will be revised from 48 hours to 24 hours. With no objections recommendation numbers 1, 2, 3 (as revised), 5 and 8 will be included in the legislative package. Staff will further review item #7 and redraft language so it would not be placed on the Internet (absentee voter requests) and #9 (voter's phone numbers) as the language was not clear and have available for discussion at the February Board meeting. It was suggested if Member McGuffage could work with Mr. Borgsmiller on a clean-up campaign finance bill the Board would consider this at the February meeting also. Ms. Cray noted that these revisions could be ready for discussion at the February 3 conference call.

Member Roupas complimented the Information Technology Division staff on an award received for the design of the computer room.

Member Porter moved in accordance with action taken in executive session to offer the position of General Counsel to Steve Sandvoss commencing February 1, 2005 for a term through June 30, 2006 at a salary to be negotiated and to commence a search for an Assistant Counsel. Member Roupas seconded the motion which passed by roll call vote of 7-0-1. Member Schneider voted present and noted he was quite happy with Mr. Sandvoss' work but disagreed with the process.

A special meeting of the Board will be held on February 3, 2005 to certify candidates and discuss legislative proposals. The next regular meeting of the State Board of Elections will be held on Tuesday, February 22, 2005 at 11 a.m. in Chicago.

With there being no further discussion, the meeting adjourned at 4:00 p.m.

Respectfully submitted,

Assistant to Executive Director

Executive Director